

Centers for Medicare & Medicaid Services, HHS

§ 402.208

in compromise, from any sum then or later owing to the respondent.

(d) Matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under section 1128A(e) of the Act may not be raised as a defense in a civil action by the United States to collect a penalty under this part.

Subpart C—Exclusions

SOURCE: 72 FR 39752, July 20, 2007, unless otherwise noted.

§ 402.200 Basis and purpose.

(a) *Basis.* This subpart is based on the sections of the Act that are specified in § 402.1(e).

(b) *Purpose.* This subpart—

(1) Provides for the imposition of an exclusion from the Medicare and Medicaid programs (and, where applicable, other Federal health care programs) against persons that violate the provisions of the Act provided in § 402.1(e) (and further described in § 402.1(c)); and

(2) Sets forth the appeal rights of persons subject to exclusion and the procedures for reinstatement following exclusion.

§ 402.205 Length of exclusion.

The length of exclusion from participation in Medicare, Medicaid, and, where applicable, other Federal health care programs, is contingent upon the specific violation of the Medicare statute. A full description of the specific violations identified in the sections of the Act are cross-referenced in the regulatory sections listed in the table in paragraph (a) of this section.

(a) In no event will the period of exclusion exceed 5 years for violation of the following sections of the Act:

Social Security Act paragraph	Code of Federal Regulations section
1833(h)(5)(D) in repeated cases	§ 402.1(c)(1)
1833(q)(2)(B) in repeated cases	§ 402.1(c)(3)
1834(a)(11)(A)	§ 402.1(c)(4)
1834(a)(18)(B)	§ 402.1(c)(5)
1834(b)(5)(C)	§ 402.1(c)(6)
1834(c)(4)(C)	§ 402.1(c)(7)
1834(h)(3)	§ 402.1(c)(8)
1834(j)(4)	§ 402.1(c)(10)
1834(k)(6)	§ 402.1(c)(31)
1834(l)(6)	§ 402.1(c)(32)
1842(b)(18)(B)	§ 402.1(c)(11)
1842(k)	§ 402.1(c)(12)

Social Security Act paragraph	Code of Federal Regulations section
1842(l)(3)	§ 402.1(c)(13)
1842(m)(3)	§ 402.1(c)(14)
1842(n)(3)	§ 402.1(c)(15)
1842(p)(3)(B) in repeated cases	§ 402.1(c)(16)
1848(g)(1)(B) in repeated cases	§ 402.1(c)(17)
1848(g)(3)(B)	§ 402.1(c)(18)
1848(g)(4)(B)(ii) in repeated cases	§ 402.1(c)(19)
1879(h)	§ 402.1(c)(23)

(b) For violation of the following sections, there is no maximum time limit for the period of exclusion.

Social Security Act paragraph	Code of Federal Regulations section
1834(a)(17)(c) for a pattern of contacts	§ 402.1(e)(2)(i)
1834(h)(3) for a pattern of contacts	§ 402.1(e)(2)(ii)
1877(g)(5)	§ 402.1(c)(22)
1882(a)(2)	§ 402.1(c)(24)
1882(p)(8)	§ 402.1(c)(25)
1882(p)(9)(C)	§ 402.1(c)(26)
1882(q)(5)(C)	§ 402.1(c)(27)
1882(r)(6)(A)	§ 402.1(c)(28)
1882(s)(4)	§ 402.1(c)(29)
1882(t)(2)	§ 402.1(c)(30)

(c) For a person excluded under any of the grounds specified in paragraph (a) of this section, notwithstanding any other requirements in this section, reinstatement occurs—

(1) At the expiration of the period of exclusion, if the exclusion was imposed for a period of 5 years; or

(2) At the expiration of 5 years from the effective date of the exclusion, if the exclusion was imposed for a period of less than 5 years and the initiating agency did not receive the appropriate written request for reinstatement as specified in § 402.300.

§ 402.208 Factors considered in determining whether to exclude, and the length of exclusion.

(a) *General factors.* In determining whether to exclude a person and the length of exclusion, the initiating agency considers the following:

(1) The nature of the claims and the circumstances under which they were presented.

(2) The degree of culpability, the history of prior offenses, and the financial condition of the person presenting the claims.

(3) The total number of acts in which the violation occurred.